

SB 1073

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THE STATE SENATE  
Monday, February 23, 2009

Senate Bill No. 1073  
As Amended

SENATE BILL NO. 1073 - By: Crain of the Senate and Sullivan of the House.

[ civil procedure - venue - flat fee schedule - effective date ]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 139, is amended to read as follows:

Section 139. Every other action must be brought in the county in which the defendant or some one of the defendants resides or resided at the time the claim arose, or may be summoned; except claims against makers of notes, claims, or other indebtedness which have been assigned, sold or transferred by or from the original payee or obligee, which claims against such original maker of such notes, claims or indebtedness can only be brought in the county in which the said maker of such note, claim or indebtedness or some one of the original makers of such note, claim or indebtedness resides or in the county in which the claim arose. Provided, however, this section shall not in any way change or limit Section ~~4671 of the Revised Laws of Oklahoma, 1910~~ 131 of this title.

1 SECTION 2. AMENDATORY 12 O.S. 2001, Section 706, is  
2 amended to read as follows:

3 Section 706. A. Scope. This section applies to all judgments  
4 of courts of record of this state, and judgments of courts of record  
5 of the United States not subject to the registration procedures of  
6 the Uniform Federal Lien Registration Act, ~~Section 3401 et seq. of~~  
7 ~~Title 68 of the Oklahoma Statutes~~, which award the payment of money,  
8 regardless of whether such judgments also include other orders or  
9 relief.

10 B. Creation of Lien. A judgment to which this section applies  
11 shall be a lien on the real estate of the judgment debtor within a  
12 county only from and after a Statement of Judgment made by the  
13 judgment creditor or the judgment creditor's attorney, substantially  
14 in the form prescribed by the Administrative Director of the Courts,  
15 has been filed in the office of the county clerk in that county.

16 1. Presentation of a Statement of Judgment and tender of the  
17 filing fee, shall, upon acceptance by the county clerk, constitute  
18 filing under this section.

19 2. A lien created pursuant to this section shall affect and  
20 attach to all real property, including the homestead, of judgment  
21 debtors whose names appear in the Statement of Judgment; however,  
22 judgment liens on a homestead are exempt from forced sale pursuant

1 to Section 1 of Title 31 of the Oklahoma Statutes and Section 2 of  
2 Article XII of the Oklahoma Constitution.

3 C. Judgment Index. A judgment index shall be kept by each  
4 county clerk in which the name of each person named as a judgment  
5 debtor in a Statement of Judgment filed with the county clerk shall  
6 appear in alphabetical order.

7 1. It shall be the duty of the county clerk, immediately after  
8 the filing of the Statement of Judgment, to make in the judgment  
9 index a separate entry in alphabetical order of the name of each  
10 judgment debtor named therein, which entry shall also contain the  
11 name(s) of the judgment creditor(s), the name of the court which  
12 granted the judgment, the number and style of the case in which the  
13 judgment was filed, the amount of the judgment, including interest,  
14 costs and attorney's fees if shown on the Statement of Judgment, the  
15 date of the filing of the judgment with the court clerk of the court  
16 which granted it, and the date of filing of the Statement of  
17 Judgment with the county clerk.

18 2. It shall also be the duty of the county clerk, immediately  
19 after the filing of a Release of Judgment Lien, to make a notation  
20 in each entry in the judgment index made when any Statement of  
21 Judgment was filed with respect to the judgment being released, of  
22 the date of filing of the Release with the county clerk, the name of

1 the judgment creditor on whose behalf the Release is filed, and  
2 whether the Release states that it is only a partial Release.

3 D. Execution of Judgment. Execution shall be issued only from  
4 the court which granted the judgment being enforced.

5 E. Release of Lien of Judgment. The lien of a judgment upon  
6 the real estate of judgment debtor in any county, which has not  
7 become unenforceable by operation of law, is released only upon the  
8 filing in the office of the county clerk in that county of a Release  
9 of Judgment Lien, or a copy thereof certified by the court clerk of  
10 the court which granted the judgment.

11 1. A judgment lien may be released, in whole or in part, by  
12 filing a Release of Judgment Lien with the county clerk by the  
13 judgment creditor or his or her attorney.

14 a. A Release of Judgment Lien shall either recite the  
15 name of the court which granted the judgment, the  
16 number and style of the case, the name of each  
17 judgment debtor with respect to whom the lien is being  
18 released, the name of each judgment creditor in favor  
19 of whom the lien was created, or otherwise adequately  
20 identify the judgment lien being released and the  
21 judgment debtor against whom the lien is indexed. The  
22 Administrative Director of the Courts shall prescribe

1 a form of Release of Judgment which may be used at the  
2 option of the judgment creditor.

3 b. If the release is only partial, it shall also contain  
4 a description of the lands then being released from  
5 the judgment lien or identify the particular judgment  
6 debtors, if less than all, with respect to whom the  
7 lien is then being released, or both, as the case may  
8 be.

9 c. A Release of Judgment Lien may also be filed with the  
10 court clerk of the court which granted the judgment  
11 but filing with the court clerk does not release any  
12 judgment lien created pursuant to this section.

13 2. The lien of any judgment which has been satisfied ~~by payment~~  
14 in full, vacated or become dormant or otherwise ~~discharged~~  
15 unenforceable and which has not been released by the judgment  
16 creditor shall be released by the court upon written motion.

17 a. The motion shall be accompanied by an affidavit  
18 stating the grounds for the motion, and shall contain  
19 or be accompanied by a notice to the judgment creditor  
20 that, if the judgment creditor does not file with the  
21 court a response or objection to the motion within  
22 fifteen (15) days after the mailing of a copy of the

1 motion to the judgment creditor, the court will order  
2 the judgment lien released.

3 b. A copy of the motion shall be mailed by certified mail  
4 by the party seeking release of the lien to the  
5 judgment creditor at the last-known address of the  
6 judgment creditor, and to the attorney of record of  
7 the judgment creditor, if any. There shall be  
8 attached to the filed motion, and to each copy of the  
9 motion to be mailed, a Certificate of Mailing showing  
10 to whom copies of the motion were mailed, the  
11 addresses to which they were mailed, and the date of  
12 mailing.

13 c. If the judgment creditor does not file a response or  
14 objection to the motion within fifteen (15) days after  
15 the mailing of a copy of the motion, the court shall  
16 order the judgment lien released.

17 d. When a judgment lien is ordered released by the court,  
18 the court shall cause a Release of Judgment Lien, in  
19 the form provided by the Administrative Director of  
20 the Courts, to be prepared. Instructions shall be  
21 printed on such form advising the judgment debtor to  
22 file the Release in the office of the county clerk of  
23 the county in which the real estate is situated in

1 order to obtain the release of the lien of the  
2 judgment upon the real estate of the judgment debtor  
3 in such county.

4 e. The party filing the motion for release shall pay all  
5 costs of the proceeding and any recording fees.

6 F. Effect of Filing or Recording a Judgment. The filing or  
7 recording of a judgment itself in the office of a county clerk on or  
8 after October 1, 1993, shall not be effective to create a general  
9 money judgment lien upon real estate, but a certified copy of a  
10 judgment may be recorded in such office for the purpose of giving  
11 notice of its contents whether or not recording is required by law.

12 G. Acceptance by County Clerk. The county clerk shall accept  
13 for filing and file any Statement of Judgment or Release of Judgment  
14 Lien without requiring any formalities of execution other than those  
15 provided in this section.

16 SECTION 3. AMENDATORY 12 O.S. 2001, Section 842, as last  
17 amended by Section 2, Chapter 450, O.S.L. 2004 (12 O.S. Supp. 2008,  
18 Section 842), is amended to read as follows:

19 Section 842. A. At any time after a final judgment, order, or  
20 decree is filed, on application of the judgment creditor, a judge of  
21 the court in which the final judgment, order, or decree was rendered  
22 shall ~~order~~:

1        1. Order the judgment debtor to appear before the judge, or a  
2 referee appointed by the judge, at a time and place specified in the  
3 order, to answer concerning the judgment debtor's property. The  
4 judge may, by order, enjoin the judgment debtor from alienating,  
5 concealing, or encumbering any of the judgment debtor's nonexempt  
6 property pending the hearing and further order of the court. Upon  
7 the judgment debtor's disclosure of any nonexempt property,  
8 proceedings as provided by law may be had for the application of the  
9 property to the satisfaction of the judgment. If the judgment  
10 debtor is personally served with an order to appear pursuant to this  
11 section, the judge issuing the order may authorize the issuance of  
12 either a contempt citation or a bench warrant for the judgment  
13 debtor's failure to comply with the order. If the judgment debtor  
14 is served by other than personal service, the judge may authorize  
15 the issuance of a contempt citation for the judgment debtor's  
16 failure to comply with the order; and

17        2. Issue an order authorizing the Oklahoma Employment Security  
18 Commission to release to the judgment creditor any employment  
19 information maintained by the Commission concerning the judgment  
20 debtor if such authority was not granted in the judgment. Service  
21 of the application on the judgment debtor by the judgment creditor  
22 shall be in accordance with Section 2005 of this title. The  
23 judgment creditor shall be entitled to any costs paid to the

1 Commission pursuant to Section 4-508 of Title 40 of the Oklahoma  
2 Statutes.

3 B. At any time after a final judgment, order, or decree is  
4 filed, an attorney for a judgment creditor may:

5 1. Subpoena the judgment debtor, pursuant to Section 2004.1 of  
6 this title, to appear at any place in the county in which the  
7 judgment, order, or decree was rendered, ~~or~~ the judgment debtor's  
8 county of residence, to answer concerning the judgment debtor's  
9 property, income, or liabilities, or to produce documents concerning  
10 the debtor's property, income, or liabilities. The judgment debtor  
11 shall not be entitled to an attendance fee or mileage;

12 2. Subpoena any person, pursuant to Section 2004.1 of this  
13 title, to appear at any place in the county where the person is  
14 located, or where service may otherwise be had on the person, to  
15 answer concerning the judgment debtor's property, income, or  
16 liabilities, or to produce documents concerning the judgment  
17 debtor's property, income, or liabilities; or

18 3. Serve interrogatories, requests for admissions, or request  
19 for production of documents, pursuant to Section 3224 et. seq. of  
20 this title, upon the judgment debtor, concerning the judgment  
21 debtor's property, income, or liabilities.

22 C. Failure by any person, without good cause, to obey a  
23 subpoena issued and served pursuant to this section by personal

1 service may be deemed a contempt of the court from which the  
2 subpoena issued.

3 D. In addition to sums otherwise due under a final judgment,  
4 order, or decree if an order, subpoena, citation for failure to obey  
5 an order to appear or discovery request is served upon the judgment  
6 debtor or any person under this section, the judgment creditor shall  
7 be entitled to costs of service and, if represented by an attorney,  
8 to an attorney fee of ~~Seventy five Dollars (\$75.00)~~ One Hundred  
9 Dollars (\$100.00) for each order or subpoena to appear, citation for  
10 failure to obey an order or subpoena to appear, and discovery  
11 request; provided, attorney fees awarded pursuant to this subsection  
12 relating to a judgment, order, or decree shall not exceed ~~One~~  
13 ~~Hundred Fifty Dollars (\$150.00)~~ Three Hundred Dollars (\$300.00) in  
14 any calendar year.

15 SECTION 4. AMENDATORY 12 O.S. 2001, Section 936, as  
16 amended by Section 5, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2008,  
17 Section 936), is amended to read as follows:

18 Section 936. A. In any civil action to recover for labor or  
19 services rendered, or on an open account, a statement of account,  
20 account stated, note, bill, negotiable instrument, or contract  
21 relating to the purchase or sale of goods, wares, or merchandise,  
22 unless otherwise provided by law or the contract which is the  
23 subject of the action, the prevailing party shall be allowed a

1 reasonable attorney fee to be set by the court, to be taxed and  
2 collected as costs.

3 B. In any civil action to recover unpaid fees, fines, costs,  
4 expenses or any other debt owed to this state or its agencies, as  
5 defined pursuant to Section 152 of Title 51 of the Oklahoma  
6 Statutes, unless otherwise provided by law, the prevailing party  
7 shall be allowed a reasonable attorney fee to be set by the court,  
8 to be taxed and collected as costs.

9 SECTION 5. AMENDATORY 12 O.S. 2001, Section 1173, is  
10 amended to read as follows:

11 Section 1173. A. Any judgment creditor may obtain a  
12 noncontinuing lien on earnings. For the purposes of this section,  
13 "earnings" means any form of payment to an individual including, but  
14 not limited to, salary, commission, or other compensation, but does  
15 not include reimbursements for travel expenses for state employees.

16 B. A noncontinuing earnings garnishment shall be commenced by  
17 filing the affidavit provided for by Section 1172 of this title.

18 C. The form for the summons required by this section shall be  
19 prescribed by the Administrative Office of the Courts.

20 D. The summons shall be served upon the garnishee, together  
21 with a copy of the judgment creditor's affidavit, a garnishee's  
22 answer form, notice of garnishment and request for hearing, and  
23 claim for exemptions, in the manner provided for in Section 2004 of

1 this title and shall be returned with proof of service within ten  
2 (10) days of its date.

3 E. The garnishee's answer shall be on a form prescribed by the  
4 Administrative Office of the Courts.

5 F. Within seven (7) days after the end of the defendant's then-  
6 current pay period or thirty (30) days from the date of service of  
7 the garnishment summons, whichever is earlier, the garnishee shall  
8 file the answer with the court clerk and the garnishee shall pay the  
9 amount withheld from the pay period to the judgment creditor's  
10 attorney or to the judgment creditor, if there is no attorney, with  
11 a copy of the answer which shall state:

12 1. Whether the garnishee was the employer of or indebted or  
13 under any liability to the defendant named in the notice in any  
14 manner or upon any account for earnings or wages, specifying, as  
15 applicable, the beginning and ending dates of the pay period  
16 existing at the time of the service of the affidavit and summons,  
17 the total amounts earned in the pay period, and all of the facts and  
18 circumstances necessary to a complete understanding of the  
19 indebtedness or liability. When the garnishee shall be in doubt  
20 respecting the liability or indebtedness, the garnishee may set  
21 forth all of the facts and circumstances concerning the same, and  
22 submit the question to the court;

1           2. If the garnishee shall claim any setoff, defense, other  
2 indebtedness, liability, lien, or claim to the property, the facts  
3 and circumstances in the affidavit;

4           3. At the garnishee's option, any claim of exemption from  
5 execution on the part of the defendant or other objection known to  
6 the garnishee against the right of the judgment creditor to apply  
7 the indebtedness or property disclosed;

8           4. If the garnishee shall disclose any indebtedness or the  
9 possession of any property to which the defendant or any other  
10 person makes claim, at the garnishee's option, the names and  
11 addresses of other claimants and, so far as known, the nature of the  
12 claims; and

13           5. That the garnishee has mailed or hand-delivered a copy of  
14 the notice of garnishment and exemptions, application for hearing,  
15 and the manner and date of compliance.

16           G. The garnishment summons served on the garnishee under this  
17 section is a lien on the defendant's property due at the time of  
18 service or the effective date of the summons to the extent the  
19 property is not exempt from garnishment.

20           H. 1. A garnishment lien under this section has priority over  
21 any subsequent garnishment lien or garnishment summons served on the  
22 garnishee.

1           2. When a garnishment summons is served under this section on a  
2 garnishee while a previous garnishment lien is still in effect, the  
3 garnishee shall answer the subsequent garnishment lien or  
4 garnishment summons by stating that the garnishee is presently  
5 holding defendant's property under a previous garnishment lien or  
6 garnishment summons and by giving the date when all previous  
7 garnishment liens or garnishment summonses are expected to end.

8           I. 1. When a postjudgment noncontinuing earnings garnishment  
9 under Section 1173 of this title or a continuing earnings  
10 garnishment under Section 1173.4 of this title is issued against a  
11 defendant already subject to an income assignment for child support,  
12 the garnishee shall determine the maximum percentage of the  
13 defendant's disposable earnings according to the provisions of  
14 Section 1171.2 of this title and then deduct from that percentage  
15 the actual percentage of the defendant's disposable earnings  
16 actually withheld under the income assignment. The resulting  
17 percentage shall be the amount to be withheld by the garnishee, not  
18 to exceed twenty-five percent (25%).

19           2. For any involuntary legal or equitable procedures through  
20 which the earnings of any individual are required to be withheld for  
21 the payment of any debt which has statutory priority over this  
22 section, the amount withheld pursuant to a garnishment under this

1 section shall be reduced by the actual sums withheld pursuant to  
2 such other involuntary process.

3 J. A noncontinuing earnings garnishment may be suspended or  
4 modified by the judgment creditor upon agreement with the judgment  
5 debtor, which agreement shall be in writing and filed by the  
6 judgment creditor with the clerk of the court in which the judgment  
7 was entered. A copy of such agreement shall be mailed by first  
8 class mail to the garnishee, postage prepaid by judgment creditor.

9 SECTION 6. AMENDATORY 12 O.S. 2001, Section 1173.4, as  
10 amended by Section 5, Chapter 450, O.S.L. 2004 (12 O.S. Supp. 2008,  
11 Section 1173.4), is amended to read as follows:

12 Section 1173.4 A. Any judgment creditor may obtain a  
13 continuing lien on earnings. For the purposes of this section,  
14 "earnings" means any form of payment to an individual including, but  
15 not limited to, salary, wages, commission, or other compensation,  
16 but does not include reimbursements for travel expenses for state  
17 employees.

18 B. A continuing earnings garnishment shall be commenced by  
19 filing the affidavit provided for by Section 1172 of this title.

20 C. The summons required by this section shall be on a form  
21 prescribed by the Administrative Office of the Courts.

22 D. The summons required by this section shall be served upon  
23 each of the garnishees, together with a copy of the judgment

1 creditor's affidavit, a garnishee's answer form, notice of  
2 garnishment and request for hearing, and claim for exemptions, in  
3 the manner provided for in Section 2004 of this title and shall be  
4 returned with proof of service within ten (10) days of its date.

5 E. The garnishee's answer shall be on a form prescribed by the  
6 Administrative Office of the Courts.

7 F. Within seven (7) days after the end of each pay period, or,  
8 if the judgment debtor does not have regular pay periods or is not  
9 paid by the garnishee within thirty (30) days from the date of the  
10 garnishment summons, and after any payment by the garnishee to the  
11 judgment debtor, the garnishee shall file an answer with the court  
12 clerk, and pay the amount withheld to the judgment creditor's  
13 attorney or to the judgment creditor, if there is no attorney,  
14 together with a copy of the answer which shall state:

15 1. Whether the garnishee was the employer of the defendant  
16 named in the notice, was indebted to the defendant, or was under any  
17 liability to the defendant in any manner or upon any account for  
18 earnings, specifying the beginning and ending dates of the pay  
19 period, if applicable, existing at the time of the service of the  
20 affidavit and summons, the total amounts earned in the entire pay  
21 period, and all of the facts and circumstances necessary to a  
22 complete understanding of any indebtedness or liability. When the  
23 garnishee shall be in doubt respecting the liability or

1 indebtedness, the garnishee may set forth all of the facts and  
2 circumstances concerning the same, and submit the question to the  
3 court;

4 2. If the garnishee shall claim any setoff, defense, other  
5 indebtedness, liability, lien, or claim to the property, the facts  
6 and circumstances in the affidavit;

7 3. At the garnishee's option, any claim of exemption from  
8 execution on the part of the defendant or other objection known to  
9 the garnishee against the right of the judgment creditor to apply  
10 the indebtedness or property disclosed;

11 4. If the garnishee shall disclose any indebtedness or the  
12 possession of any property to which the defendant or any other  
13 person makes claim, at the garnishee's option, the names and  
14 addresses of other claimants and, so far as known, the nature of  
15 their claims; and

16 5. That the garnishee has mailed or hand-delivered a copy of  
17 the notice of garnishment and exemptions, application for hearing,  
18 and the manner and date of compliance.

19 G. The garnishment summons served on the garnishee under this  
20 section is a lien on the defendant's property due at the time of  
21 service or the effective date of the summons, to the extent the  
22 property is not exempt from garnishment. This lien attaches to  
23 subsequent nonexempt earnings until one of the following occurs:

1        1. ~~The total earnings subject to the lien equals the balance of~~  
2 ~~the judgment against the defendant owing to the plaintiff;~~

3        2. ~~The employment relationship is terminated;~~

4        3. ~~The judgment against the defendant is vacated, modified, or~~  
5 ~~satisfied in full;~~

6        4. ~~2.~~ The summons is dismissed; or

7        5. ~~3.~~ One hundred eighty (180) days from the effective date of  
8 ~~service of the affidavit and summons~~ have elapsed; provided, an  
9 affidavit and summons shall continue in effect and shall apply to a  
10 pay period beginning before the end of the one\_hundred\_eighty-day  
11 period even if the conclusion extends beyond the end of the period.

12        H. 1. A garnishment lien under this section has priority over  
13 any subsequent garnishment lien or garnishment summons served on the  
14 garnishee during the period it is in effect, regardless of whether  
15 the amounts withheld by the garnishee are reduced by the court or by  
16 agreement of the parties.

17        2.    a.    When a garnishment summons is served under this  
18                    section on a garnishee while a previous garnishment  
19                    lien is still in effect, the garnishee shall answer  
20                    the subsequent garnishment lien or garnishment summons  
21                    by stating that the garnishee is presently holding  
22                    defendant's property under a previous garnishment lien  
23                    or garnishment summons, and by giving the date when

1           all previous garnishment liens or garnishment summons  
2           are expected to end.

3           b.    The subsequent summons is not effective if a summons  
4           or lien on the same cause of action is pending at the  
5           time of service unless the subsequent summons in the  
6           same cause of action is served after the one-hundred-  
7           fiftieth day of the previous garnishment lien.

8           I.   1.   When a postjudgment wage garnishment under Section 1173  
9           of this title or a continuing earnings garnishment under this  
10          section is issued against a defendant already subject to an income  
11          assignment for child support, the garnishee shall determine the  
12          maximum percentage of the defendant's disposable earnings according  
13          to the provisions of Section 1171.2 of this title and then deduct  
14          from that percentage the actual percentage of the defendant's  
15          disposable earnings actually withheld under the income assignment.  
16          The resulting percentage shall be the amount to be withheld by the  
17          garnishee, not to exceed twenty-five percent (25%).

18          2.    For any involuntary legal or equitable procedures through  
19          which the earnings of any individual are required to be withheld for  
20          the payment of any debt which has statutory priority over this  
21          section, the amount withheld pursuant to a garnishment under this  
22          section shall be reduced by the actual sums withheld pursuant to  
23          such other involuntary process.

1 J. A continuing earnings garnishment may be suspended or  
2 modified for a specific period of time within the effective period  
3 of the garnishment by the judgment creditor upon agreement with the  
4 judgment debtor, which agreement shall be in writing and filed by  
5 the judgment creditor with the clerk of the court in which the  
6 judgment was entered, and a copy of which shall be mailed by first-  
7 class mail, postage prepaid by the judgment creditor to the  
8 garnishee.

9 K. Any garnishment issued against a debtor already subject to a  
10 continuing or noncontinuing earnings garnishment shall take effect  
11 immediately upon the conclusion of the prior garnishment, and shall  
12 be effective for its full one-hundred-eighty-day period of time or  
13 as otherwise provided in this section as specified in subsection G  
14 of this section.

15 SECTION 7. AMENDATORY 12 O.S. 2001, Section 1183, is  
16 amended to read as follows:

17 Section 1183. The garnishee may be examined by the judgment  
18 creditor in any manner prescribed by the Oklahoma Discovery Code.  
19 Discovery may commence at any time after the service of the  
20 garnishee summons. If the garnishee is a corporation, any principal  
21 officer thereof may be so examined. Within forty-five (45) days  
22 after the filing of the answer affidavit by the garnishee, the  
23 judgment creditor may commence discovery concerning any matter

1 contained in the answer or germane to any liability on the  
2 garnishee's part to the principal defendant. ~~Attached to any~~  
3 ~~discovery request or notice of deposition shall be a statement that,~~  
4 ~~upon failure to answer or appear, a judgment may be taken against~~  
5 ~~the garnishee by default for the amount of the judgment and costs~~  
6 ~~which the judgment creditor shall recover or has recovered against~~  
7 ~~the defendant in the principal action, together with costs of the~~  
8 ~~garnishment, and that the garnishee may also be proceeded against~~  
9 ~~for contempt.~~ A copy of the discovery request or notice of  
10 deposition and such statement shall be served upon the garnishee or  
11 the garnishee's attorney of record in the manner provided for  
12 service of summons. The garnishee within twenty (20) days of the  
13 date of service of a discovery request shall deliver by mail a copy  
14 to the judgment creditor or the judgment creditor's attorney of  
15 record, full and true answers to all discovery requests, verified by  
16 affidavit, in the manner prescribed by the Oklahoma Discovery Code.

17 SECTION 8. AMENDATORY 12 O.S. 2001, Section 1190, as  
18 amended by Section 1, Chapter 26, O.S.L. 2002 (12 O.S. Supp. 2008,  
19 Section 1190), is amended to read as follows:

20 Section 1190. A. A garnishee may deduct a fee of Ten Dollars  
21 (\$10.00) from the funds of the defendant in the garnishee's  
22 possession as reimbursement for costs incurred in answering. If the  
23 garnishee is not indebted to the defendant and the garnishee's

1 answer evidencing that is filed and mailed or delivered to the  
2 judgment creditor or to the judgment creditor's attorney of record,  
3 the garnishee may assess the judgment creditor a fee of Ten Dollars  
4 (\$10.00) as reimbursement for such costs.

5 B. 1. In case of the trial of any issue between the judgment  
6 creditor and any garnishee, costs shall be awarded to the judgment  
7 creditor and against the garnishee, in addition to the garnishee's  
8 liability, if the judgment creditor recovered more than the  
9 garnishee admitted by the garnishee's answer; and if the judgment  
10 creditor does not, the garnishee shall recover costs from the  
11 judgment creditor. The costs shall include a reasonable attorney's  
12 fee to be taxed in favor of the prevailing party.

13 2. In the case of the trial to determine the amount to be  
14 recovered for due and owing child support, where any liability on  
15 the part of the garnishee is disclosed, costs shall be awarded to  
16 the judgment creditor and against the defendant, including a  
17 reasonable attorney's fee.

18 C. In all other cases under this article not expressly provided  
19 for, the court may, in its discretion, award costs in favor of or  
20 against any party.

21 D. In addition to sums otherwise due pursuant to a judgment, a  
22 judgment creditor, if represented by an attorney, shall be entitled  
23 to an attorney's fee of Fifty Dollars (\$50.00) for prosecuting a

1 garnishment pursuant to subparagraphs b, c, and d of paragraph 2 of  
2 subsection B of Section 1171 of this title, and an attorney's fee of  
3 One Hundred Dollars (\$100.00) for prosecuting a garnishment pursuant  
4 to subparagraph e of paragraph 2 of subsection B of Section 1171 of  
5 this title, not to exceed a total of ~~One Hundred Fifty Dollars~~  
6 ~~(\$150.00)~~ Two Hundred Dollars (\$200.00) in any ~~twelve month period~~  
7 calendar year.

8 SECTION 9. AMENDATORY 12 O.S. 2001, Section 1764, as  
9 last amended by Section 3, Chapter 447, O.S.L. 2004 (12 O.S. Supp.  
10 2008, Section 1764), is amended to read as follows:

11 Section 1764. A fee of Forty-five Dollars (\$45.00) shall be  
12 charged and collected for the filing of the affidavit for the  
13 commencement of any action or counterclaim for an amount of One  
14 Thousand Five Hundred Dollars (\$1,500.00) or less. Any action in  
15 excess of One Thousand Five Hundred Dollars (\$1,500.00) shall be  
16 subject to the filing fees provided in Title 28 of the Oklahoma  
17 Statutes for the same kind of action as filed in district court.  
18 For the filing of any counterclaim or setoff, fees shall be charged  
19 and collected pursuant to Section 152.1 of Title 28 of the Oklahoma  
20 Statutes. Except as otherwise provided in Section 1772 of this  
21 title, no other fee or charge shall be collected by any officer for  
22 any service rendered pursuant to the provisions of the Small Claims  
23 Procedure Act, or for the taking of affidavits for use in connection

1 with any action tried pursuant to the provisions of the Small Claims  
2 Procedure Act. If the affidavit and order are served by the sheriff  
3 or a licensed private process server, the court clerk shall collect  
4 the usual fee for the sheriff, which shall be taxed as costs in the  
5 case. The fee paid to a licensed private process server, as  
6 approved by the court, shall be taxed as additional costs in the  
7 case. After judgment, the court clerk shall issue such process and  
8 shall be entitled to collect only such fees and charges as are  
9 allowed by law for like services in other actions. All fees  
10 collected as authorized by this section and Section 1772 of this  
11 title shall be deposited with other fees that are collected by the  
12 district court. Any statute providing for an award of attorneys  
13 fees shall be applicable to the small claims division if the  
14 attorney makes an appearance in the case, whether before or after  
15 judgment or on hearing for disclosure of assets.

16 SECTION 10. AMENDATORY 28 O.S. 2001, Section 152, as  
17 last amended by Section 2, Chapter 247, O.S.L. 2007 (28 O.S. Supp.  
18 2008, Section 152), is amended to read as follows:

19 Section 152. A. In any civil case filed in a district court,  
20 the court clerk shall collect, at the time of filing, the following  
21 flat fees, none of which shall ever be refundable, and which shall  
22 be the only charge for court costs, except as is otherwise  
23 specifically provided for by law:

- 1        1.    Actions for divorce, alimony without
- 2                divorce, separate maintenance, custody or
- 3                support..... \$140.00
- 4        2.    Any ancillary proceeding to modify or
- 5                vacate a divorce decree providing for
- 6                custody or support.....\$40.00
- 7        3.    Probate and guardianship.....\$132.00
- 8        4.    Annual guardianship report.....\$30.00
- 9        5.    Any proceeding for sale or lease of real or
- 10                personal property or mineral interest in
- 11                probate or guardianship.....\$40.00
- 12        6.    Any proceeding to revoke the probate of a
- 13                will.....\$40.00
- 14        7.    Judicial determination of death.....\$55.00
- 15        8.    Adoption.....\$102.00
- 16        9.    Civil actions and counterclaims for an
- 17                amount of Ten Thousand Dollars (\$10,000.00)
- 18                or less and condemnation.....\$147.00
- 19        10.   Civil actions and counterclaims for an
- 20                amount of Ten Thousand One Dollars
- 21                (\$10,001.00) or more .....\$160.00
- 22        11.   Garnishment.....\$20.00
- 23        12.   Continuing wage garnishment.....\$60.00

1       13. Any other proceeding after judgment.....\$30.00

2       14. All others, including but not limited to

3             actions for forcible entry and detainer,

4             judgments from all other courts, including

5             the Workers' Compensation Court.....\$82.00

6       15. Notice of renewal of judgment.....\$20.00

7       B. In addition to the amounts collected pursuant to paragraphs

8       1, 3, 7, 8, 9, 10 and 14 of subsection A of this section, the sum of

9       Six Dollars (\$6.00) shall be assessed and credited to the Law

10       Library Fund.

11       C. In addition to the amounts collected pursuant to subsections

12       A and B of this section, the sum of Twenty-five Dollars (\$25.00)

13       shall be assessed and credited to the Oklahoma Court Information

14       System Revolving Fund created pursuant to Section 1315 of Title 20

15       of the Oklahoma Statutes.

16       D. Of the amounts collected pursuant to paragraph 8 of shall be

17       deposited to the credit of the Voluntary Registry and Confidential

18       Intermediary program and the Mutual Consent Voluntary Registry

19       established pursuant to the Oklahoma Adoption Code.

20       E. Of the amounts collected pursuant to subsection A of this

21       section, the sum of Ten Dollars (\$10.00) shall be deposited to the

22       credit of the Child Abuse Multidisciplinary Account.

1 F. In addition to the amounts collected pursuant to subsections  
2 A and B of this section, the sum of Three Dollars (\$3.00) shall be  
3 assessed and credited to the Office of the Attorney General Victim  
4 Services Unit.

5 G. In any case in which a litigant claims to have a just cause  
6 of action and that, by reason of poverty, the litigant is unable to  
7 pay the fees and costs provided for in this section and is  
8 financially unable to employ counsel, upon the filing of an  
9 affidavit in forma pauperis executed before any officer authorized  
10 by law to administer oaths to that effect and upon satisfactory  
11 showing to the court that the litigant has no means and is,  
12 therefore, unable to pay the applicable fees and costs and to employ  
13 counsel, no fees or costs shall be required. The opposing party or  
14 parties may file with the court clerk of the court having  
15 jurisdiction of the cause an affidavit similarly executed  
16 contradicting the allegation of poverty. In all such cases, the  
17 court shall promptly set for hearing the determination of  
18 eligibility to litigate without payment of fees or costs. Until a  
19 final order is entered determining that the affiant is ineligible,  
20 the clerk shall permit the affiant to litigate without payment of  
21 fees or costs. Any litigant executing a false affidavit or counter  
22 affidavit pursuant to the provisions of this section shall be guilty  
23 of perjury.

1 H. Payments to the court clerk for fees and costs assessed  
2 pursuant to this section may be made by a nationally recognized  
3 credit or debit card or other electronic payment method as provided  
4 in paragraph 1 of subsection B of Section 151 of this title.

5 I. As used in this section, a "counterclaim" means a request of  
6 any form of affirmative relief or injunction claimed against any  
7 party to the litigation. This shall not apply to domestic or family  
8 law cases, or to a prayer for costs or attorney fees. A  
9 counterclaim must be clearly designated as a counterclaim on the  
10 title of the first page of the pleading or such claim will be  
11 treated as merely an affirmative defense. Any party may move to  
12 dismiss a counterclaim filed without payment of the filing fee as  
13 required by subsection A of this section.

14 SECTION 11. This act shall become effective November 1, 2009.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-17-09 - DO  
16 PASS, As Amended and Coauthored.